Office - Supreme Court, U. S.
FILED
SEP 28 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 148

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,

For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,

Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,

for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,

Respondents.

REPLY BRIEF.

THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
Attorneys for Petitioners.

Evansville, Indiana,
September 25, 1942.

U. S. Law Printing Company, 2817 N. Halsted St., Chicago, Ill.

INDEX

PAGE

Reply Brief of Petitioners:

I. Reply to Part II of Respondents' Brief 2

II. Reply to Part III of Respondents' Brief 2-4

Reply to Respondents' Argument 4

Reply to Point I (a) of Respondents' Argument.... 4

Reply to Point I (b) of Respondents' Argument.... 5-8

Reply to Point I (c) and (d) of Respondents' Argument 8-10

Reply to Point I (e) of Respondents' Argument....10-11

TABLE OF CASES CITED.

Abdon v. Wallace, 95 Ind. App. 604; 165 N. E. 68.....8, 10

Allen, et al. v. Southern Pacific Company, et al., (Ore.) 110 P. 2nd, 933 6

Evans, et al. v. Johnson, et al. (Ill. App.) 20 N. E. 2nd, 841, 309 U. S. 662; petition for writ of certiorari denied, 60 S. Ct. 582; 84 L. Ed. 1010 4

Long, et al. v. Van Osdale, et al., 218 Ind. 483; 29 N. E. 2nd, 953 5

IN THE

Supreme Court of the United States

No. 148

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,

For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by Said Railroad Company in the Same Capacity as the Named Parties,

Petitioners,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
RUSSELL M. HAYHURST, GEORGE KOENIG and JAMES DUVALL,

for Themselves and on Behalf of All Those Members of the Brotherhood of Railroad Trainmen Who Are Employed by the Chicago and Eastern Illinois Railway Company as Switchmen and Yardmen in its Yard in Evansville, Indiana,

A. F. WHITNEY, President, J. A. ZANGER, Vice-President, and G. W. ANDERSON, General Secretary and Treasurer, for Themselves and on Behalf of All Members of the Brotherhood of Railroad Trainmen,

Respondents.

REPLY BRIEF.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petitioners for reply to the brief of the respondents in opposition to the petition for writ of certiorari herein, respectfully submit the following:

I.

Replying to II of respondents' brief, page 2 thereof, respondents question the jurisdiction of the Supreme Court of the United States in this cause to pass upon the within petition for writ of certiorari, and make five specific statements. The same will be answered herein under *"Reply to Respondents' Argument."*

II.

Respondents under III of respondents' brief, page 3 thereof, denominated "Additional Statement of the Case" state that in petitioners' original brief in this court under this heading, are comments and innuendoes which are incorrect. Replying to this assertion:

First the respondents question petitioners' claim of exclusive seniority rights in the Louisville and Nashville yards in Evansville, Indiana. It is true that the Yard was not a closed shop in the sense that it was necessary to belong to the Brotherhood of Railroad Trainmen, however only two or three did not belong. See testimony of N. E. Lane (Rec. p. 38). But the Yard is closed to all who do not have seniority with the Louisville and Nashville Railroad Company by virtue of the often referred to collective labor agreement of that railroad with its workmen. See testimony of N. E. Lane (Rec. pp. 39, 40). The fact remains that this is a class action maintained by the petitioners in behalf of all workmen who are employed by the Louisville and Nashville Railroad Company in the same capacity and who hold the right to work in the Louisville and Nashville yards to the exclusion of all others.

Next, respondents question an assertion in petitioners' brief that respondents had acquiesced in the decision of

the Board of Appeals of the Brotherhood of Railroad Trainmen, dated May 5th, 1938 (Rec. p. 70). The facts are that from that date forward, not one single thing was done by the respondents to question said decision until June, 1939 (Rec. p. 63). Petitioners feel fully warranted in interpreting respondents' conduct as acquiescing in the decision of the Board of Appeals, whose jurisdiction they had also invoked. See statement filed by Vice-president Zanger with Board of Appeals, April 2nd, 1938 (Rec. pp. 69, 70).

At the top of page 5 of their brief, respondents assert that the Grand Lodge of the Brotherhood of Railroad Trainmen is the supreme governing body of that organization, and therefore the action of that body reversing the decision of the Board of Appeals was not *ultra vires* and void. This statement cannot possibly be true, for before this controversy had arisen, the Grand Lodge had, by constitutional amendment, abrogated its broad powers, and had created the Board of Appeals and had delegated to it and vested it with final jurisdiction and authority to pass upon such questions as are here presented by this dispute between two groups of members. See Constitutional Provisions, sections 15a and 15b. (Rec. p. 30-31.) Specifically, the Constitution provides that *"Such decisions* (of Board of Appeals) *shall be the final adjudication of any and all rights and questions included in the appeal."* It is not possible that two bodies or tribunals be so vested with final authority.

Upon page 8 of respondents' brief, the implication is made that there had been a merger of the Louisville and Nashville Railroad Company and the Chicago and Eastern Illinois Railway Company. That is not true. There was no merger of these two railroads in any sense. Rather,

the Chicago and Eastern Illinois Railway Company, after the closing of their station upon July 13th, 1935, merely thereafter availed themselves of the facilities of the Louisville and Nashville Railroad Company under a rental agreement.

Reply to Respondents' Argument.

The petitioners will reply to the points of the argument of respondents' brief in their exact order.

Point I.

(a)

Respondents make the bold assertion that the Supreme Court of the United States has previously denied certiorari in an action which presented the same questions of law. Respondents base their assertion upon the case of *Evans, et al.* v. *Johnson, et al.* (Ill. App.) 20 N. E. 2nd 841, in which a petition for writ of certiorari was denied by the Supreme Court of the United States, 309 U. S. 662; 60 S. Ct. 582; 84 L. Ed. 1010. Manifestly, respondents are in error in making this brazen statement. If respondents had examined the proceedings of this case in the Supreme Court of the United States, where it was Cause No. 636 in the October Term, 1939, respondents could have determined that this cause was not submitted to the Supreme Court of the United States upon any question bearing any similarity to any question here presented by petitioners application for a writ of certiorari. The *Evans* case above referred to, was presented to the Supreme Court of the United States solely for a decision upon a question involving the interpretation of the National Railway Labor Act of 1926, as amended in 1934. No other questions were presented. This Court will of course take judicial notice of the pleadings and briefs in the *Evans* case.

(b)

Respondents assert that the question involved in the decision of the Supreme Court of Indiana was not new or unexpected, and therefore, the presentation of a federal question by petition for re-hearing came too late. Anticipating the position of respondents in this respect, the petitioners in their brief in support of their petition for a writ of certiorari herein, fully stated their position in this respect at pages 2 to 6 thereof.

Respondents say there is nothing unexpeeted about a decision that is based upon a prior decision of the same court, and refer to the case of *Long, et al.* v. *Van Osdale, et al.*, 218 Ind. 483, 29 N. E. 2nd, 953, decided by the Supreme Court of Indiana prior to the decision in the case at bar. True it is, that in the *Long* case just referred to, the Supreme Court of Indiana approves the decision of the Illinois Appellate Court in the *Evans* case, herein previously discussed, *but it is important here to note that in this case, the Supreme Court of Indiana in its written opinion, failed to refer to a decision in the case of Long, et al.* v. *Van Osdale, et al., supra, or to the Illinois case of Evans, et al.* v. *Johnson, et al., supra.* Admittedly, the Supreme Court of Indiana did not consider the *Long* case as decisive of any question here presented.

It is further interesting to note that the respondents fail to dispute that a federal question is now involved, namely, the denial of due process of law as guaranteed by the Federal Constitution. They urge the merits of their defense to petitioners' original cause of action, but they fail to deny to the petitioners the right to seek redress in court for the protection of their rights secured them by a collective labor agreement with their employer, and further secured to them by their membership in the Brotherhood of Railroad Trainmen.

Upon page 22 of their brief herein at the top of said page, respondents state that the decision of the Supreme Court of Indiana was decided in line with the great weight of authority, and add: "There are no decisions of the courts of last resort holding to the contrary." For answer to this assertion, petitioners refer to the decisions and authorities cited under Points B, C, D and E of their brief herein, at pages 15 to 31 thereof, and also to call the attention of this Court to the case of *Allen, et al.* v. *The Southern Pacific Co., et al.* (1941) (Ore.) 110 P. 2nd, 933. In said case, two groups of members of the Brotherhood of Railroad Trainmen were involved in a dispute over seniority rights and the right to follow certain work where there had been a change in train service. This controversy had been submitted to the Board of Appeals of the Brotherhood of Railroad Trainmen for decision as in the case at bar. The Board of Appeals entered a decision sustaining the position of the appellants, and appellees sought to reverse the same in the courts of Oregon. The Supreme Court of that state in a thorough, well-written opinion, made the following comments:

> "From these provisions of the constitution and rules of the Brotherhood, it is clear that the board of appeals, which is the court of final resort in the Brotherhood, had undoubted authority to decide the appeal taken from the action of the sub-committee and that its decision upon all the questions presented upon that appeal was final and conclusive upon all the members of the organization and particularly upon these plaintiffs. Under that decision, the agreement of August 4, 1927, was declared by the highest authority existing in the Brotherhood to be in full force and effect and to be a final determination of the seniority rights of all Portland division trainmen to man trains on the Shasta division.

"It is clear from the various provisions of the constitution and general rules above referred to that the Brotherhood, through its various committees and tribunals, provides an exclusive method of settling all grievances and disputes between its members, including the settlement of their respective seniority rights, and that, in respect to all said matters, the board of appeals is the court of last resort whose decisions are final and conclusive upon all its members. See *Cannon* v. *Brotherhood of Railroad Trainmen,* 262 Ky. 113, 89 S. W. 2d 620, and authorities there cited. The constitution expressly provides: 'Such decision (of the board of appeals) shall be the final adjudication of any and all rights and questions included in the appeal.'

" 'It is settled law,' said the court in *Donovan* v. *Travers,* 285 Mass. 167, 188 N. E. 705, 708, 'that members of an unincorporated, voluntary association, like the brotherhood, are bound by the determination of the association's tribunals if the decision is reached after observance of the formalities it prescribes, after fair opportunity for presenting their case, where there has been no excess of jurisdiction, no bad faith or capricious, unreasonable or arbitrary action. *Richards* v. *Morison,* 229 Mass. 458, 461, 118 N. E. 868.' "

It is important that petitioners clearly state their position. They do not contend that under their plan of work or the constitution of the Brotherhood of Railroad Trainmen, that courts have the right to determine their seniority. This, they have contracted, is to be decided by the tribunals of the Brotherhood. But they do earnestly contend that the courts have the right to decide, and should, where called upon, determine whether the authority to determine their rights of seniority, the right to work, is within the Board of Appeals of their organization, or with the Grand Lodge, sitting in convention. They have a

right to seek redress in court to have the benefit of their favorable decision obtained before the Board of Appeals of the Brotherhood of Railroad Trainmen, which the Supreme Court of Oregon has properly held is the supreme tribunal of this organization in matters referred to it for decision.

(c) and (d).

Respondents say that there is no property or civil right involved in this cause of action. Are the rights asserted by petitioners property rights? Indiana courts have so held. See *Abdon* v. *Wallace* (1933), 95 Ind. App. 604; 165 N. E. 68. (Petition to transfer to the Supreme Court of Indiana denied.) Certainly petitioners' right to file a cause of action and to a judicial determination of that cause of action predicated upon the rights secured them by their membership in the Brotherhood of Railroad Trainmen is a vested property right. From the standpoint of a workman, a sorry picture is here presented of a gigantic labor organization seeking a favorable decision in this particular case, contending that the very things secured a workman by his membership, justifying the existence of the organization, are not property rights. The rights the petitioners have involved in this cause are not confined to their right of seniority. They have the right to work under certain favorable conditions. They have the right to all the benefits due them under the collective labor agreement with the Louisville and Nashville Railroad Company. They also have the right to the benefits and privileges gained them by their membership in the Brotherhood of Railroad Trainmen, which includes the right to insist, in a court of equity, upon the enforcement of the rights they have gained through a favorable decision of the Board of Appeals of that organization.

As a corollary to the above proposition urged by respondents, they insist that courts will not interfere in the inter-

nal affairs of the union. The statement of the following elementary rules fully answers respondents' position in this respect:

1. A member of a labor organization is bound by its constitution and by-laws. In this case, this applies to both respondents and petitioners, as they are all members.

2. Labor organizations have the right to provide for the settlement of disputes between its membership and the decision of tribunals so constituted are fully binding upon the members.

3. Such decisions, when fairly and reasonably made, are binding upon the courts.

4. Courts will not pry into the internal affairs of a union to determine the merits of a controversy where such controversy should be settled and decided by the tribunals of that organization, but:

5. Courts will exercise their jurisdiction to prevent abuses, and to protect individuals from the *ultra vires* acts and unauthorized assumption of power and authority by arbitrary leaders or others.

In this cause of action, the petitioners have gained a favorable decision before the Board of Appeals of the Brotherhood, and have a valid right to invoke the protection of a court in the State of Indiana to protect them from the enforcement of the *ultra vires* action of the Cleveland Convention, which attempted, without authority to reverse the Board of Appeals. If the petitioners have no right to seek redress in court under these circumstances, then they have gained nothing by their membership in this organization. They are subject to the arbitrary wishes

of the leaders. Organized labor in this country cannot long prevail if the individual members surrender all rights when they become affiliated with such an organization. Nor will the great benefits workers have secured through organized labor long endure if unions are to be run on the pattern of the dictators. The courts of this country must be open to individual union members, there to seek redress and protection against the invasion of their rights by the arbitrary, *ultra vires* acts of the union itself.

(e)

Respondents assert that there was a judicial determination of the questions here involved by a court of competent jurisdiction. The sum and substance of the opinion and decision of the Supreme Court of Indiana (Record pp. 98 to 103), is that they have decided that they will not decide this cause of action. This constitutes a refusal to accord to the petitioners a judicial determination of this cause of action. Upon the authority of the Indiana case of *Abdon* v. *Wallace, supra,* the petitioners had a cause of action. This necessarily carried with it a right to have that cause of action judicially determined. True, petitioners had a day in court, and an opportunity to present their evidence in an orderly fashion, but all this was idle procedure. Upon the authority of the opinion of the Supreme Court of Indiana in this cause of action, there was nothing to decide. The Brotherhood of Railroad Trainmen is made an entity all apart, not subject to any judicial interference. In the petition herein, and in the brief in support thereof, the petitioners have shown that the opinion of the Supreme Court of Indiana recognizes that this cause was not submitted upon the questions upon which the cause was there decided. The petitioners again call the attention of this court to the great importance and moment of the questions here presented. Labor unions

having come to play an increasingly important part in our economic structure, should not be permitted, in their own interests, to grow beyond the reach of the judiciary, and this statement is submitted on behalf of the petitioners, who are workmen, a part of the organized labor movement, and who are desirous that the progress of the labor movement be not impeded by situations such as presented in this cause of action.

The petitioners respectfully urge that they have presented a meritorious petition for writ of certiorari in this cause, and have supported the same by authority. They respectfully urge that the writ herein prayed shall issue out of and under the seal of this Court, directed to the Supreme Court of the State of Indiana, to the end that the judgment of the Supreme Court of Indiana may be reviewed and reversed by this Honorable Court.

Respectfully submitted,

CARLOS J. MILLER,
CHARLES MORTON,
HOMER SHELTON,

For Themselves and on Behalf of All Other Trainmen and Yardmen Employed by the Louisville and Nashville Railroad Company, in Vanderburgh County, Indiana, Who Are Employed by said Railroad Company in the Same Capacity as the Named Parties.

Petitioners.

By THEODORE LOCKYEAR,
ELMER Q. LOCKYEAR,
CHARLES J. EICHEL,
Attorneys for Petitioners.

Dated at Evansville, Indiana,
September 25th, 1942.